

Bill No. SB 1976

Barcode 305394 Comm: RCS 04/23/2006 01:28 PM

597-2230A-06

Proposed Committee Substitute by the Committee on Banking and Insurance

1 A bill to be entitled

2 An act relating to public records and meetings;

3 creating s. 627.3121, F.S.; providing an

4 exemption from public-records requirements for

5 certain records of the Florida Workers'

6 Compensation Joint Underwriting Association,

7 Inc.; authorizing the release of records that

8 are confidential and exempt from disclosure to

9 another agency in the performance of that

10 agency's official duties; requiring the

11 receiving agency to maintain the

12 confidentiality of the records; providing an

13 exemption from public-meetings requirements for

14 portions of a meeting of the association's

15 board of governors or a subcommittee during

16 which confidential records are discussed;

17 requiring that exempt portions of meetings be

18 recorded, transcribed, and maintained for a

19 specified period; providing for future

20 legislative review and repeal of the exemptions

21 under the Open Government Sunset Review Act;

22 providing a statement of public necessity;

23 providing a contingent effective date.

24

25 Be It Enacted by the Legislature of the State of Florida:

26

27 Section 1. Section 627.3121, Florida Statutes, is

28 created to read:

29 627.3121 Public-records and public-meetings

30 exemptions.--

31 (1) The following records of the Florida Workers'

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1 Compensation Joint Underwriting Association, Inc., are
2 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
3 of the State Constitution:

4 (a) Underwriting files, except that a policyholder or
5 an applicant shall be provided access to his or her own
6 underwriting files.

7 (b) Claims files until termination of all litigation
8 and the settlement of all claims arising out of the same
9 accident, except that portions of the claims files may remain
10 exempt from disclosure if otherwise provided by law.

11 (c) Medical records that are part of a claims file and
12 other information relating to the medical condition or medical
13 status of a claimant.

14 (d) Records obtained or generated by an auditor
15 pursuant to a routine audit until the audit is completed or,
16 if the audit is conducted as part of an investigation, until
17 the investigation is closed or ceases to be active. An
18 investigation is considered "active" while the investigation
19 is being conducted with a reasonable, good-faith belief that
20 it could lead to the filing of administrative, civil, or
21 criminal proceedings.

22 (e) Matters reasonably encompassed in privileged
23 attorney-client communications.

24 (f) Proprietary information licensed to the
25 association under contract if the contract requires the
26 association to maintain the confidentiality of such
27 proprietary information.

28 (g) All information relating to the medical condition
29 or medical status of an association employee which is not
30 relevant to the employee's capacity to perform his or her
31 duties, except as otherwise provided in this paragraph, and

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1 all information relating to the medical status of the
2 employee's dependents. Information that is exempt under this
3 paragraph includes, but is not limited to, information
4 relating to a workers' compensation claims files, insurance
5 benefits, and retirement or disability benefits.

6 (h) All records relative to an employee's
7 participation in an employee assistance program upon the
8 entrance of the employee into the program, except as otherwise
9 provided in s. 112.0455(11).

10 (i) Information relating to negotiations for
11 financing, reinsurance, reinsurance commutation agreements,
12 depopulation, or contractual services until the conclusion of
13 the negotiations.

14 (j) Minutes of exempt portions of meetings, as
15 provided in subsection (3), until termination of all
16 litigation with regard to that claim.

17 (k) Reports provided to or submitted by the
18 association regarding suspected fraud or other criminal
19 activity and producer appeals and related reporting regarding
20 suspected misconduct until such investigation is closed or
21 ceases to be active.

22 (l) Information secured from the Department of Revenue
23 regarding payroll information and client lists of employee
24 leasing companies obtained pursuant to ss. 440.381 and
25 468.529.

26
27 Underwriting files and confidential claims files shall be
28 released to a carrier that is considering underwriting a risk
29 insured by the association, a producer seeking to place such a
30 risk with such a carrier, or another entity seeking to arrange
31 voluntary market coverage for association risks if the

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carrier, producer, or other entity agrees in writing,
notarized and under oath, to maintain the confidentiality of
such files. When a file is transferred to a carrier, producer,
or other entity, that file is no longer a public record
because it is not held by an agency that is subject to the
public-records law.

(2) Records or portions of records made confidential
and exempt by this section may be released, upon written
request, to another agency in the performance of that agency's
official duties and responsibilities. The receiving agency
shall maintain the confidential and exempt status of such
record or portion of a record.

(3) That portion of a meeting of the association's
board of governors, or any subcommittee of the association's
board, at which records made confidential and exempt by this
section are discussed is exempt from s. 286.011 and s. 24(b),
Art. I of the State Constitution. All exempt portions of
meetings shall be recorded and transcribed. The board shall
record the times of commencement and termination of the
meeting, all discussion and proceedings, the names of all
persons present at any time, and the names of all persons
speaking. An exempt portion of any meeting may not be off the
record. Subject to this section and s. 119.021(2), the court
reporter's notes of any exempt portion of a meeting shall be
retained by the association for a minimum of 5 years. A copy
of the transcript of any exempt portion of a meeting in which
claims files are discussed becomes a public record as to
individual claims after settlement of the claim, and any
confidential and exempt information shall be redacted.

(4) This section is subject to the Open Government
Sunset Review Act in accordance with s. 119.15, and shall

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1 stand repealed on October 2, 2011, unless reviewed and saved
2 from repeal through reenactment by the Legislature.

3 Section 2. (1) The Legislature finds that it is a
4 public necessity to make certain records and meetings
5 delineated in s. 627.3121, Florida Statutes, confidential and
6 exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art.
7 I of the State Constitution. The Legislature finds that the
8 Florida Workers' Compensation Joint Underwriting Association,
9 Inc., was created to provide workers' compensation and
10 employer's liability insurance to applicants who are required
11 by law to maintain workers' compensation and employer's
12 liability insurance and who are in good faith entitled to but
13 are unable to procure such insurance through the voluntary
14 market. The Legislature finds that the exemption from
15 public-records requirements for open claims files of the
16 association is necessary for the effective and efficient
17 administration of an entity created to provide workers'
18 compensation and employer's liability insurance as described
19 in this section and in s. 627.311(5), Florida Statutes. Claims
20 files contain detailed information concerning the claim,
21 medical information, and other personal information concerning
22 the claimant, and also contain information detailing the
23 evaluation of the legitimacy of the claim, the extent of
24 incapacity, and a valuation of the award, if any, which should
25 be made. Information in a claims file that is held by the
26 association includes the medical records and other information
27 related to the medical condition or medical status of a
28 claimant. The Legislature finds that the claimants' medical
29 records and other medical-related information are personal and
30 sensitive. Therefore, the Legislature finds that an exemption
31 from public-records requirements for medical records and other

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1 information related to the medical condition or medical status
2 of a claimant is a public necessity in order to protect a
3 claimant's health-related information. Matters of personal
4 health are traditionally a private and confidential concern.
5 The release of the medical records of a claimant or personal
6 identifying information concerning a claimant would violate
7 the privacy of the individual or could cause unwarranted
8 damage to the name or reputation of the individual. When a
9 claim is contested, the work product of legal counsel may also
10 be included in the claims file in the form of direction to
11 claims professionals. Allowing the claimant or claimant's
12 lawyers access to the file, which could be used for purposes
13 of negotiation, claim evaluation, and settlement
14 considerations, would weaken the legal position of the
15 association and could result in higher awards and settlements
16 paid out by the association and ultimately contribute to the
17 creation of deficits to be funded by assessments against
18 certain association policyholders or all workers' compensation
19 policyholders. The Legislature finds that the internal-audit
20 process, and therefore accountability to the public, will be
21 damaged if records relating to an incomplete internal audit or
22 investigation are made public. The Legislature finds that
23 information relating to the medical, mental, or behavioral
24 condition of an employee of the association or the employee's
25 dependents is private and that matters of personal health are
26 traditionally a private and confidential concern. The
27 Legislature finds that if information regarding ongoing
28 negotiations for financing, reinsurance, contractual services,
29 or related matters were made public prior to the conclusion of
30 the negotiations, the association's bargaining position would
31 be severely damaged, resulting in additional cost to the

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association and the public. The Legislature finds that if reports of suspected fraudulent activity were made public, criminal investigations of insurance fraud would be harmed. The Legislature finds that payroll and client lists of businesses are traditionally private matters.

(2) The Legislature further finds that closing access to meetings of the board of directors of the association, or of a subcommittee of the board, wherein matters made exempt and confidential under s. 627.3121, Florida Statutes, are discussed is essential to preserving the confidentiality of such matters and enabling the association to carry out its statutory duty of providing workers' compensation coverage. The members of the board of governors act in a trustee capacity and must take care that the assets of the association are managed wisely. Their efforts to meet as a collegial body in an open and frank setting that includes staff are thwarted by the current requirement that such meetings be open. Furthermore, discussion of confidential matters in an open and public setting might reveal private, sensitive medical information that is otherwise confidential.

Section 3. This act shall take effect upon becoming a law if SB 2118 or similar legislation is enacted during the 2006 Regular Session, or an extension thereof, and becomes law.